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5 *Attorneys for Defendant Michael Merrell*

**FILED**  
DISTRICT COURT OF GUAM  
JAN 23 2007  
MARY L.M. MORAN  
CLERK OF COURT

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE TERRITORY OF GUAM**

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 MICHAEL MERRELL,

13 Defendant.  
14

Criminal Case No.06-00052

**JUSTIFICATION TO CONTINUE TRIAL**

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17 Counsel for the Defendant provides the following justification to continue the trial  
18 currently set for January 23, 2007, at 9:30 a.m.:

- 19 1. Defendant intends to enter a plea and has actually signed a plea agreement offered  
20 by the Government, pleading guilty to an information charging him with Reckless  
21 Driving. A facsimile copy of the plea agreement signed by Defendant is attached  
22 hereto. Defense counsel has not yet received through the mail the original signed  
23 plea agreement, and therefore Defendant will be resending an original signed plea  
24 to counsel.  
25 2. Counsel believes the requested continuance is necessary in order for counsel to  
26 receive through the mail the original signed plea agreement from Defendant and to  
27 submit said plea to the Court.  
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3. Defendant has waived his right to speedy trial, in order to allow the original signed plea agreement to be received by counsel in Guam and filed with the Court.
4. Continuing the trial is requested in the interests of justice.
5. The Government will not be prejudiced by a continuance of trial as it is aware that Defendant has signed the plea agreement, as a facsimile copy of the plea signed by Defendant was previously submitted to the Government.

For the foregoing reasons, Defendant requests a continuance of trial for at least two weeks.

**RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of January, 2007.

**LUJAN AGUIGUI & PEREZ LLP**

By:

  
**DELIA LUJAN, ESQ.**  
*Attorneys for Defendant Michael Merrell*

1 michaelmerrellple2

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United States Attorney  
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Special Assistant U.S. Attorney  
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7 Attorneys for the United States of America

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IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM

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UNITED STATES OF AMERICA, ) MAGISTRATE CASE NO.

14

Plaintiff.

15

vs.

**PLEA AGREEMENT**

16

MICHAEL MERRELL,

17

Defendant.

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Pursuant to Rule 11(c)(1)(B), the United States and the defendant, MICHAEL

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MERRELL, enter into the following plea agreement:

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1. The defendant, MICHAEL MERRELL, agrees to enter a guilty plea to an Information  
22 charging him with Reckless Driving, in violation of Title 16, Guam Code Annotated, Section  
23 9107, as assimilated by Title 18, United States Code, Sections 7(3) and 13.

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2. The defendant understands that the maximum sentence for Reckless Driving, in  
25 violation of 16 G.C.A. § 9107, as a petty misdemeanor as specified in 9 G.C.A. § 80.34, is sixty  
26 (60) days imprisonment and a fine or restitution not exceeding five hundred dollars (\$500) as set

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1 forth in 9 G.C.A. § 80.50. The defendant also understands that he will be subject to a ten dollar  
2 (\$10) special assessment fee, as set forth in 18 U.S.C. § 3013,. Following the sentencing on the  
3 Reckless Driving offense, the United States will dismiss the Information in Criminal Case No.  
4 06-00052.

5 3. If defendant is financially unable to immediately pay the fine in full, defendant agrees  
6 to make a full disclosure of his financial status to the United States Attorney's Office by  
7 completing a Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment  
8 schedule. Defendant understands that, by law, interest accrues on any remaining balance of the  
9 debt.

10 4. The defendant understands that to establish the violation of Reckless Driving, in  
11 violation Title 16, Guam Code Annotated, Section 9107, as assimilated by Title 18, United  
12 States Code, Sections 7(3) and 13, the United States must prove each of the following elements  
13 beyond a reasonable doubt:

- 14 a. First, that the defendant drove his vehicle upon a highway;  
15 b. Second, that his driving was in willful or wanton disregard for the safety of  
16 persons or property; and  
17 c. Third, that the offense occurred on land acquired for the use of the United  
18 States and under the exclusive or concurrent jurisdiction thereof.

19 5. The government and the defendant stipulate to the following facts for purposes of the  
20 sentencing:

- 21 a. The defendant was born in 1956 and is a citizen of the United States; and  
22 b. That on or about September 22, 2006, in the District of Guam, the defendant,  
23 MICHAEL MERRELL, at U.S. Naval Base Guam, on land acquired for the use of the United  
24 States and under the exclusive jurisdiction thereof, did drive his motor vehicle upon a highway in  
25 willful or wanton disregard for the safety of persons or property thereon. That while the  
26 defendant, MICHAEL MERRELL, was driving his motor vehicle, he was under the influence of  
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1 an alcoholic beverage. That while the defendant, MICHAEL MERRELL, was driving his motor  
2 vehicle, he drove thru a chain link fence positioned at a military check point.

3 6. The defendant agrees to pay restitution in the amount of \$500.00 to the United States  
4 Treasury for the damage he caused to the chain link fence.

5 7. The United States and the defendant agree to recommend the following sentence:

6 a. That the defendant participate in, and successfully complete an alcohol or drug  
7 education program, or both of these programs as designated by the court;

8 b. That the defendant be referred to a qualified substance abuse counselor for an  
9 assessment of the person's alcohol dependence and need for treatment;

10 c. That the counselor submit a report with recommendations to the court, which may  
11 require the person to obtain appropriate treatment;

12 d. That all costs for such assessment or treatment or both be borne by the defendant;

13 e. That the defendant be placed on 60 (sixty) days supervised probation during which, at  
14 a minimum, the following conditions of probation be imposed:

15 (1) Defendant shall not commit another Federal, State, or local crime during the  
16 term of probation;

17 (2) Defendant shall refrain from drinking alcohol during the probationary period  
18 and shall submit to alcohol testing as directed by his Probation Officer;

19 f. That failure of the defendant to follow all of his conditions of probation will result in a  
20 hearing to revoke probation at which time the court may impose the maximum penalty allowable  
21 under the statute charged.

22 8. The parties understand and agree that it is the Court's duty to impose sentence upon  
23 the defendant, and that any sentence either stipulated to or recommended herein is not binding  
24 on the court.

25 9. The defendant agrees to waive any right to appeal or to collaterally attack this  
26 conviction. The defendant reserves the right to appeal the sentence actually imposed in this case.  
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1        10. The defendant acknowledges that he has been advised of his rights as set forth below  
2 prior to entering into his plea agreement. Specifically, defendant has been fully advised of, has  
3 had sufficient opportunity to reflect upon, and understands the following:

4            a. The nature and elements of the charge and the mandatory minimum penalty  
5 provided by law, if any, and the maximum possible penalty provided by law;

6            b. His right to be represented by an attorney;

7            c. His right to plead not guilty and the right to be tried by a jury and at that trial, the  
8 right to be represented by counsel, the right to confront and cross-examine witnesses against  
9 him, and the right not to be compelled to incriminate himself, that is, the right not to testify;

10           d. That if he pleads guilty, there will not be a further trial of any kind on the charges  
11 to which such plea is entered so that by entering into this plea agreement, he waives, that is,  
12 gives up, the right to a trial;

13           e. That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions  
14 about the offenses to which he has pled, under oath, and that if he answers these questions under  
15 oath, on the record, his answers may later be used against him in prosecution for perjury or false  
16 statement if an answer is untrue;

17           f. That he agrees that the plea agreement is voluntary and not a result of any force,  
18 threats or promises apart from the plea agreement;

19           g. That he reads, writes and speaks the English language and has no need for an  
20 interpreter;

21           h. That he has read the plea agreement and understands it; and

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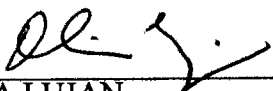
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1 i. The Defendant is satisfied with the representation of his lawyer and feels that his  
2 lawyer has done everything possible for his defense.

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5 DATE

MICHAEL MERRELL  
Defendant

6  
7 1/8/07  
8 DATE

  
DELIA LUJAN  
Attorney for Defendant

9 LEONARDO M. RAPADAS  
10 United States Attorney  
11 Districts of Guam and NMI

12  
13 DATE

By: RYAN M. ANDERSON  
Special Assistant U.S. Attorney

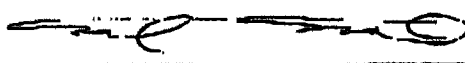
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15 DATE

JEFFREY J. STRAND  
First Assistant U.S. Attorney

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2 lawyer has done everything possible for his defense.

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5 DATE

 01/05/07  
MICHAEL MERRELL  
Defendant

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8 DATE

DELIA LUJAN  
Attorney for Defendant

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LEONARDO M. RAPADAS  
United States Attorney  
Districts of Guam and NMI

12 By: 13 DATE

RYAN M. ANDERSON  
Special Assistant U.S. Attorney

15 DATE

JEFFREY J. STRAND  
First Assistant U.S. Attorney